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Report of the Working Group

Chapter 10
Offences and misconduct against the Court

Section I
Offences against the administration of justice under article 70

Rule 6.32
Exercise of jurisdiction

1. Before deciding whether to exercise jurisdiction, the Court may consult with States Parties that may have jurisdiction over the offence.

2. In making a decision whether or not to exercise jurisdiction, the Court may consider, in particular:

(a) The availability and effectiveness of prosecution in a State Party;

(b) The seriousness of an offence;

(c) The possible joinder of charges under article 70 with charges under articles 5 to 8;

(d) The need to expedite proceedings;

(e) Links with an ongoing investigation or a trial before the Court; and

(f) Evidentiary considerations.

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3. The Court shall give favourable consideration to a request from the host State for a waiver of the power of the Court to exercise jurisdiction in cases where the host State considers such a waiver to be of particular importance.

4. If the Court decides not to exercise its jurisdiction, it may request a State Party to exercise jurisdiction pursuant to article 70, paragraph 4.

Rule 6.33
Application of the Statute and the Rules

1. Unless otherwise provided in sub-rules 2 and 3, rule 6.32 and rules 6.34 to 6.39, the Statute and the Rules shall apply *mutatis mutandis* to the Court's investigation, prosecution and punishment of offences defined in article 70.

2. The provisions of Part 2, and any rules thereunder, shall not apply, with the exception of article 21.

3. The provisions of Part 10, and any rules thereunder, shall not apply, with the exception of articles 103, 107, 109 and 111.

Rule 6.34
Periods of limitation

1. If the Court exercises jurisdiction in accordance with rule 6.32, it shall apply the periods of limitation set forth in this rule.

2. Offences defined in article 70 shall be subject to a period of limitation of five years from the date on which the offence was committed, provided that during this period no investigation or prosecution has been initiated. The period of limitation shall be interrupted, if an investigation or prosecution has been initiated during this period, either before the Court or by a State Party with jurisdiction over the case pursuant to article 70, paragraph 4 (a).

3. Enforcement of sanctions imposed with respect to offences defined in article 70 shall be subject to a period of limitation of 10 years from the date on which the sanction has become final. The period of limitation shall be interrupted with the detention of the convicted person or while the person concerned is outside the territory of the States Parties.

Rule 6.35
Investigation, prosecution and trial

1. The Prosecutor may initiate and conduct investigations with respect to the offences defined in article 70 on his or her own initiative, on the basis of information communicated by a Chamber or any reliable source.

2. Articles 53 and 59, and any rules thereunder, shall not apply.

3. For purposes of article 61, the Pre-Trial Chamber may make any of the determinations set forth in that article on the basis of written submissions, without a hearing, unless the interests of justice otherwise require.

4. A Trial Chamber may, as appropriate and taking into account the rights of the defence, direct that there be joinder of charges under article 70 with charges under articles 5 to 8.

Rule 6.36
Sanctions under article 70

1. If the Court imposes sanctions with respect to article 70, this rule shall apply.

2. Article 77, and any rules thereunder, shall not apply, with the exception of an order of forfeiture under article 77, paragraph 2 (b), which may be ordered in addition to imprisonment or a fine or both.

3. Each offence may be separately fined and those fines may be cumulative. Under no circumstances may the total amount exceed 50 per cent of the value of the convicted person's identifiable assets, liquid or realizable, and property, after deduction of an appropriate amount that would satisfy the financial needs of the convicted person and his or her dependants.

4. In imposing a fine the Court shall allow the convicted person a reasonable period in which to pay the fine. The Court may provide for payment of a lump sum or by way of instalments during that period.

5. If the convicted person does not pay a fine imposed in accordance with the conditions set forth in sub-rule 4, appropriate measures may be taken by the Court pursuant to rules 10.23 to 10.28 and in accordance with article 109. Where, in cases of continued wilful non-payment, the Court, on its own motion or at the request of the Prosecutor, is satisfied that all available enforcement measures have been exhausted, it may as a last resort impose a term of imprisonment in accordance with article 70, paragraph 3. In the determination of such term of imprisonment, the Court shall take into account the amount of fine paid.

Rule 6.37
International cooperation and judicial assistance

1. With regard to offences under article 70, the Court may request a State to provide any form of international cooperation or judicial assistance corresponding to those forms set forth in Part 9. In any such request, the Court shall indicate that the basis for the request is an investigation or prosecution of offences under article 70.

2. The conditions for providing international cooperation or judicial assistance to the Court with respect to offences under article 70 shall be those set forth in article 70, paragraph 2.

Rule 6.38
Ne bis in idem

In respect of offences under article 70, no person shall be tried before the Court with respect to conduct which formed the basis of an offence for which the person has already been convicted or acquitted by the Court or another court.

Rule 6.39
Immediate arrest

In the case of an alleged offence under article 70 committed in the presence of a Chamber, the Prosecutor may orally request that Chamber to order the immediate arrest of the person concerned.

Section II
Misconduct before the Court under article 71

Rule 6.40
Disruption of proceedings

Having regard to article 63, paragraph 2, the Presiding Judge of the Chamber dealing with the matter may, after giving a warning:

(a) Order a person disrupting the proceedings of the Court to leave or be removed from the courtroom; or,

(b) In case of repeated misconduct, order the interdiction of that person from attending the proceedings.

Rule 6.41
Refusal to comply with a direction by the Court

1. When the misconduct consists of deliberate refusal to comply with an oral or written direction by the Court, not covered by rule 6.40, and that direction is accompanied by a warning of sanctions in case of breach, the Presiding Judge of the Chamber dealing with the matter may order the interdiction of that person from the proceedings for a period not exceeding 30 days or, if the misconduct is of a more serious nature, impose a fine.

2. If the person committing misconduct as described in sub-rule 1 is an official of the Court, or a defence counsel, or a legal representative of victims, the Presiding Judge of the Chamber dealing with the matter may also order the interdiction of that person from exercising his or her functions before the Court for a period not exceeding 30 days.

3. If the Presiding Judge in cases under sub-rules 1 and 2 considers that a longer period of interdiction is appropriate, the Presiding Judge shall refer the matter to the Presidency, which may hold a hearing to determine whether to order a longer or permanent period of interdiction.

4. A fine imposed under sub-rule 1 shall not exceed 2,000 euros, or the equivalent amount in any currency, provided that in cases of continuing misconduct, a new fine may be imposed on each day that the misconduct continues, and such fines shall be cumulative.

5. The person concerned shall be given an opportunity to be heard before a sanction for misconduct, as described in this rule, is imposed.

Rule 6.42
Conduct covered by both articles 70 and 71

If conduct covered by article 71 also constitutes one of the offences defined in article 70, the Court shall proceed in accordance with article 70 and rules 6.32 to 6.39.